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Pages: 14



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RECORDING REQUESTED BY:

City of Santa Clara
1500 Warburton Avenue
Santa Clara, California 95050

BRENDA DAVIS
SANTA CLARA COUNTY RECORDER
Recorded at the request of
City

RDE # 884
11/28/2883
10:37 AM

WHEN RECORDED, MAIL TO:

Department of Toxic Substances Control
Region 2
700 Heinz Avenue, Suite 200
Berkeley, CA 94710
Attn: Barbara J. Cook, P.E., Chief
Northern California
Operations Branch Coastal Cleanup

**COVENANT TO RESTRICT USE OF PROPERTY
ENVIRONMENTAL RESTRICTION**

**THE CELL
SANTA CLARA GATEWAY SITE
SANTA CLARA, CALIFORNIA
APN 104-01-104**

This Covenant and Agreement ("Covenant") is made by and between the City of Santa Clara (the "Covenantor"), the current owner of property situated in Santa Clara, County of Santa Clara, State of California, described in Exhibit "A", attached hereto and incorporated herein by this reference (the "Property"), and the Department of Toxic Substances Control (the "Department"). Pursuant to Civil Code section 1471(c), the Department **has** determined that this Covenant is reasonably necessary **to** protect present or future human health or safety or the environment **as** a result of the presence on the land of hazardous materials as defined in Health and Safety Code ("**H&SC**") section **25260**. The Covenantor and the Department, collectively referred to as the "Parties", hereby agree that the use of the Cell be restricted as set forth in this Covenant.

ARTICLE I
STATEMENT OF FACTS

1.01. The Property, totaling approximately 0.74 acre, is more particularly described and depicted in Exhibit "A", attached hereto and incorporated herein by this reference. The Property is located northwest of the intersection of Yerba Buena Way and the Union Pacific Rail Road tracks, between Yerba Buena Way and Highway **237**, County of Santa Clara, State of California. The Property is more specifically described as a portion of Santa Clara County Assessor's Parcel **No. : 104-01-104**.

1.02. The Property is within the Santa Clara Gateway site (the "Site"). The Site is being remediated pursuant to a Remedial Action Plan pursuant to Chapter **6.8** of Division **20** of the H&SC, under the oversight of the Department. Because hazardous substances, as defined in H&SC section **253 16**, which **are** also hazardous materials **as** defined in H&SC Section **25260**, including polycyclic aromatic hydrocarbons (PAHs), remain in soil underneath the Property, the Remedial Action Plan provided that a deed restriction would be required **as** part of the site remediation. The Department circulated the Remedial Action Plan together with a ~~draft~~ Negative Declaration pursuant to the California Environmental Quality Act, Public Resources Code section **21000** et seq. for public review and comment. The Remedial Action Plan and the Negative Declaration were approved by the Department on May **30, 2001**. Remedial actions include excavation of PAHs-impacted soil from the Site, soil consolidation on the Property, and installation of two feet of clean soil (the "Cap") to cover the impacted material consolidated into one location or the Cell on the Property. The operation and maintenance of the Cap is required pursuant to an Operation and Maintenance Plan incorporated into the Operation and Maintenance Agreement between the City of Santa Clara and the Department dated November **10, 2003**.

1.03. **As** detailed in the Remedial Action Plan approved by the Department on May **30, 2001**, the subsurface soils within **20** feet of the surface of the Cap contain hazardous substances, **as** defined in H&SC section **253 16**, which include PAHs detected at concentrations exceeding

residential Preliminary Remedial Goal levels. Groundwater at the Property is found approximately 15 feet below ground surface. Groundwater sampling analytical results show no contamination. Based on the current condition, the Department concluded that the use of the Property as a residence, hospital, school for persons under the age of 21 or day care center would entail an unacceptable cancer risk. The Department further concluded that the Property, as remediated, and subject to the restrictions of this Covenant, does not present an unacceptable threat to human safety or the environment.

ARTICLE II

DEFINITIONS

2.01. Department. “Department” means the California Department of Toxic Substances Control and includes its successor agencies, if any.

2.02. Owner. “Owner” means the Covenantor, its successors in interest, and their successors in interest, including heirs and assigns, who at any time hold title to all or any portion of the Property.

2.03. Occupant. “Occupant” means Owners and any person or entity entitled by ownership, leasehold, or other legal relationship to the right to occupy any portion of the Property.

ARTICLE III

GENERAL PROVISIONS

Restrictions to Run with the Land. This Covenant sets forth protective provisions, covenants, restrictions, and conditions (collectively referred to as “Restrictions”), subject to which the Property and every portion thereof shall be improved, held, used, occupied, leased, sold, hypothecated, encumbered, and/or conveyed. Each and every Restriction: (a) runs

with the land pursuant to H&SC section 25355.5 (a)(1)(C) and Civil Code section 1471;(b) inures to the benefit of and passes with each and every portion of the Property, (c) is for the benefit of, and is enforceable by the Department, and (d) is imposed upon the entire Property unless expressly stated as applicable only to a specific portion thereof.

3.02. Binding upon Owners/Occupants. Pursuant to H&SC **section 25355.5(a)** (1) (C), this Covenant binds all owners of the Property, their heirs, successors, and assignees, and the agents, employees, and lessees of the owners, heirs, successors, and assignees. Pursuant to Civil Code section 1471 (b), all successive owners of the Property are expressly bound hereby for the benefit of the Department.

3.03. Written Notice of the Presence of Hazardous Substances. Prior to the sale, lease or sublease of the Property, or any portion thereof, the owner, lessor, or sublessor shall give the buyer, lessees, or sublessee notice that hazardous substances are located on or beneath the Property, as required by H&SC section 25359.7.

3.04. Incorporation into Deeds and Leases. The Restrictions set forth herein shall be incorporated by reference in each and all deeds and leases for any portion of the Property.

3.05. Conveyance of Property. The Owner shall provide notice to the Department not later than thirty (30) days after any conveyance of any ownership interest in the Property (excluding mortgages, liens, and other non-possessory encumbrances). The Department shall not, by reason of this Covenant, have authority to approve, disapprove, or otherwise affect proposed conveyance, except as otherwise provided by law, by administrative order, or by a specific provision of this Covenant.

ARTICLE IV
RESTRICTIONS

4.01. Prohibited Uses. The Property shall not be used for any of the following purposes:

- (a) A residence, including any mobile home or factory built housing, constructed or installed for use as residential human habitation.
- (b) A hospital for humans.
- (c) A public or private school for persons under 21 years of age.
- (d) A day care center for children.

4.02. Soil Management.

- (a) No activities that will disturb the soil below the Cap (e.g., excavation, grading, removal, trenching, filling, earth movement or mining) shall be allowed on the Property without a Soil Management Plan and a Health and Safety Plan approved by the Department.
- (b) Any contaminated soils brought to the surface by grading, excavation, trenching or backfilling shall be managed in accordance with all applicable provisions of state and federal law.
- (c) The Owner shall provide the Department written notice at least fourteen (14) days prior to any building, filling, grading, mining or excavating in the Property.

4.03. Non-Interference with Cap

Covenantor agrees:

- (a) Activities that may disturb the Cap (e.g. excavation, grading, removal, trenching, filling, earth movement, or mining) shall not be permitted on the Property without prior review and approval by the Department.
- (b) All uses and development of the Property shall preserve the integrity of the Cap.
- (c) The Cap shall not be altered without written approval by the Department.

- (d) Covenantor shall notify the Department of each of the following: (i) The type, cause, location and date of any disturbance to the Cap and (ii) the ~~type~~ and date of repair of such disturbance. Notification to the Department shall be made ~~as~~ provided below within ten (10) working days of both the discovery of any such disturbance and the completion of any repairs. Timely and accurate notification by any Owner or Occupant shall satisfy this requirement on behalf of all other Owners and Occupants.

4.04. Access for Department The Department shall have reasonable right of entry and access to the Property for inspection, monitoring, and other activities consistent with the purposes of this Covenant ~~as~~ deemed necessary by the Department in order to protect the public health or safety, or the environment.

4.05. Access for Implementing O&M The entity or person responsible for implementing the Operation and Maintenance Agreement shall have reasonable right of entry and access to the Property for the purpose of implementing the Operation and Maintenance Agreement until the Department determines that no ~~further~~ Operation and Maintenance is required.

ARTICLE V

ENFORCEMENT

5.01 Enforcement. Failure of the Covenantor or Owner to comply with any of the Restrictions specifically applicable to it shall be grounds for the Department to require that the Covenantor or Owner modify or remove any improvements ("Improvements" herein shall mean all buildings, roads, driveways, and paved parking areas) constructed or placed upon any portion of the Property in violation of the Restrictions. Violation of this Covenant shall be grounds for the Department to file civil or criminal actions as provided by law.

ARTICLE VI
VARIANCE, TERMINATION, AND TERM

6.01. Variance. Covenantor, or any other aggrieved person, may apply to the Department for a written variance from the provisions of this Covenant. Such application shall be made in accordance with **H&SC** section **25233**.

6.02. Termination. Covenantor, or any other aggrieved person, may apply to the Department for a termination of the Restrictions or other terms of **this** Covenant **as** they apply to all or any portion of the **Property**. Such application shall be made in accordance with **H&SC** section **25234**.

6.03. Term. Unless ended in accordance with the Termination paragraph above, by law, or by the Department in the exercise of its discretion, this Covenant shall continue in effect in perpetuity.

ARTICLE VII
MISCELLANEOUS

7. 1. No Dedication Intended. Nothing set forth in **this** Covenant shall be construed to be a gift or dedication, or offer of a ~~gift~~ or dedication, of the **Property**, or any portion thereof to the general public or anyone else for any purpose whatsoever.

7.02. Department Ref ~~—~~ All references to the Department include successor agencies/departments or other successor entity.

7.03. Recordation. The Covenantor shall record this Covenant, with all referenced Exhibits, in the County of Santa Clara within ten (10) days of the Covenantor's receipt of a fully executed original.

7.04. Notices. Whenever any person gives or serves any Notice ("Notice" as used herein includes any demand or other communication with respect to this Covenant), each such Notice shall be in writing and shall be deemed effective: (1) When delivered, if personally delivered to the person being served or to an officer of a corporate party being served, or (2) three (3) business days after deposit in the mail, if mailed by United States mail, postage paid, certified, return receipt requested

To Owner: City of Santa Clara
 1500 Warburton Avenue
 Santa Clara, California 95050
 Attention: Rajeev Batra, City Engineer

To Department: Department of Toxic Substances Control
 700 Heinz Avenue, Suite 200
 Berkeley, CA 94710
 Attention: Barbara J. Cook, P.E., Chief
 Northern Coastal Cleanup Operations Branch

Any party may change its address or the individual to whose attention a Notice is to be sent by giving written Notice in compliance with this paragraph.

7.05 Party Invalidity. If any portion of the Restrictions or other term set forth herein is determined by a court of competent jurisdiction to be invalid for any reason, the surviving portions of this Covenant shall remain in full force and effect as if such portion found invalid had not been included herein.

7.06 Statutory References, All statutory references include successor provisions.

IN WITNESS WHEREOF, the Parties execute this Covenant.

Covenantor: City of Santa Clara

APPROVED AS TO FORM:

By: Jennifer Sparacino
Title: Jennifer Sparacino, City Manager
Date: 11/3/03

Gary M. Baum
GARY M. BAUM
Assistant City Attorney

ATTEST:

Department of Toxic Substances Control

Jo E. Bocyan
City Clerk

By: Barbara J. Cook
Title: Barbara J. Cook, Chief
North Coast Cleanup Operations Branch
Date: 11/17/2003

California All-Purpose Acknowledgment

STATE OF CALIFORNIA)
) ss
COUNTY OF SANTA CLARA)

On November 4, 2003, before me, Joy Sherman, a Notary Public in and for said County and State, personally appeared Jennifer Spasacino personally known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her authorized capacity, and that by her signature on the instrument ~~the~~ person, ~~or~~ the entity upon behalf of which the person acted, executed ~~the~~ instrument.



WITNESS ~~my~~ hand and official seal.

Joy Sherman
NOTARY PUBLIC, STATE OF CALIFORNIA

THIS CERTIFICATE MUST BE ATTACHED TO THE DOCUMENT DESCRIBED BELOW:
Covenant to Restrict Use of Property-Environmental Restriction-The Cell-Santa Clara Gateway Site-
APN 104-01-104 SC 17,881

CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT

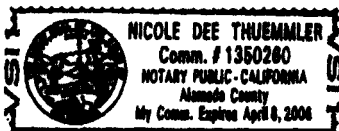
State of California

County of Alameda

On 19 2003 before me, Nicole Dee Thuemmler Notary Public
Name and Title of Officer (e.g. Jane Doe, Notary Public)

personally appeared Barbara J. Cook
Name(s) of Signer(s)

☐ personally known to me -OR- ☒ proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument



WITNESS my hand and official seal.

Nicole Dee Thuemmler
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

- ☐ Individual
- ☐ Corporate Officer
- ☐ Title(s): _____
- ☐ Partner - ☐ Limited ☐ General
- ☐ Attorney-in-Fact
- ☐ Trustee
- ☐ Guardian or Conservator
- ☐ Other: _____

Signer Is Representing: _____

Signer's Name: _____

- ☐ Individual
- ☐ Corporate Officer
- ☐ Title(s): _____
- ☐ Partner - ☐ Limited ☐ General
- ☐ Attorney-in-Fact
- ☐ Trustee
- ☐ Guardian or Conservator
- ☐ Other: _____

Signer Is Representing: _____

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Top of Thumb here

EXHIBIT A

CONTAMINANT CELL SITE

(North of Yerba Buena Way)

A portion of Remainder 3 as shown on that certain Parcel Map filed for record in Book 737 of Maps, at Pages 1 thru 4, Santa Clara County Records, and being more particularly described as follows:

Beginning ~~at~~ the westerly terminus of a southerly line of said Remainder 3, having a bearing and distance of North 61° 30' 44" East, 270.56 feet, said southerly line also being the northerly line of said Yerba Buena Way, an 84-foot wide right-of-way as shown on said map;

Thence, from said Point of Beginning, southwesterly along said southerly line, from a tangent bearing of South 61° 30' 44" West, along the arc of curve to the left, having a radius of 842.00 feet, through a central angle of 11° 43' 50", and an arc length of 172.39 feet;

Thence, leaving said southerly line, along the common boundary between said Remainder 3 and Parcel 3 as shown on said map, North 26° 40' 39" West, 89.86 feet to the ~~most~~ westerly corner of said Remainder 3, said corner also being in the southerly line of State Highway 237 as shown on said map;

Thence, along last said southerly line, last said southerly line also being the northerly boundary of said Remainder 3, the following three (3) courses;

1. North 63° 19' 21" East, 66.13 feet,
2. North 60° 54' 14" East, 222.70 feet,
3. North 29° 43' 22" West, 9.00 feet,

Thence, leaving last said southerly line, North 61° 01' 22" East, 129.23 feet;

Thence, South 28° 29' 53" East, 82.60 feet to the northerly line of said Yerba Buena Way;

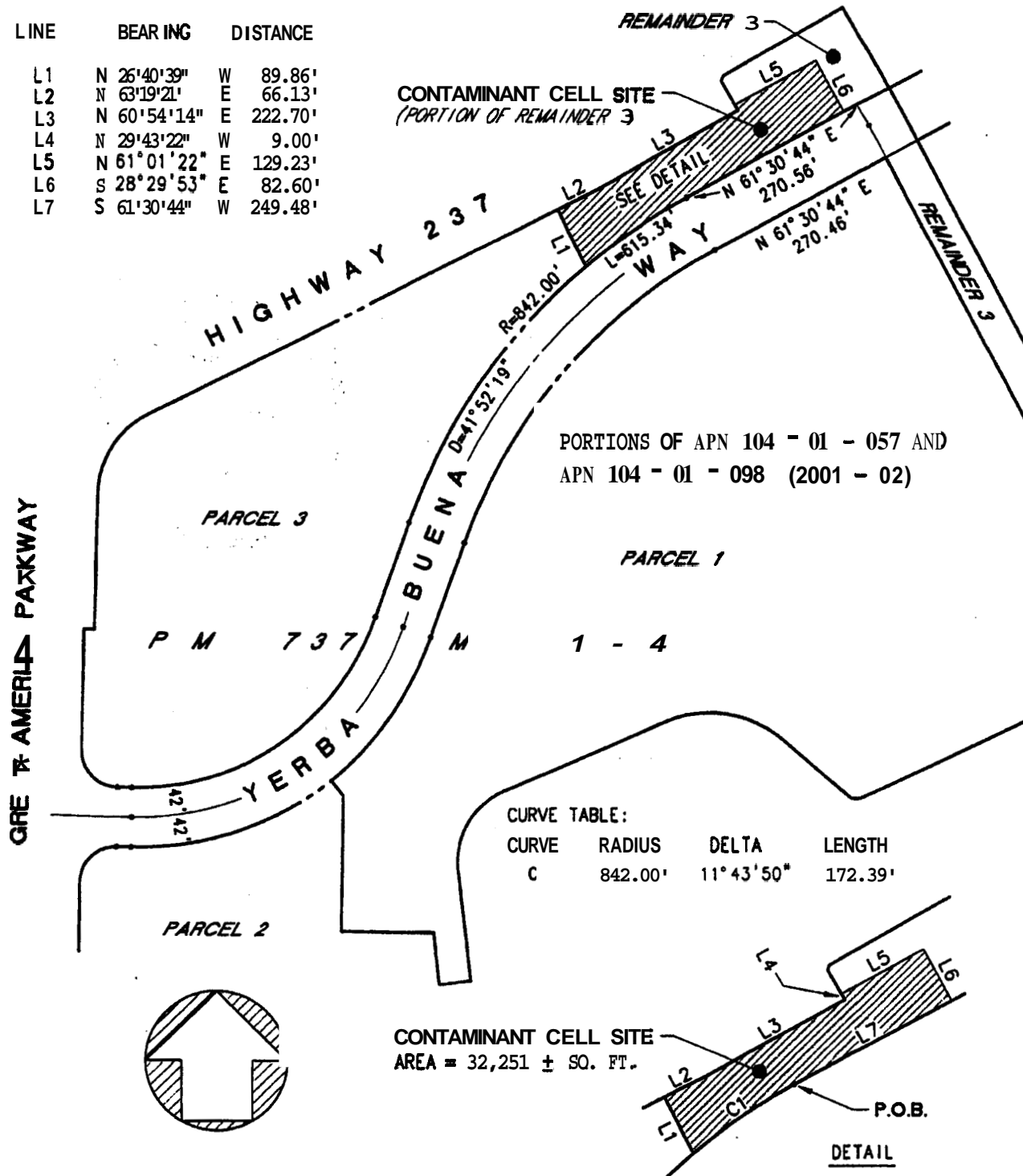
Thence, along said northerly line of Yerba Buena Way, South 61° 30' 44" West, 249.48 feet to the Point of Beginning; and,

Containing an area of 32,251 square feet, more or less.

The Contaminant Cell Site is located in the City of Santa Clara, County of Santa Clara, State of California, as shown on Tracing No. 11,317-A, attached hereto and made a part hereof by this reference.

LINE TABLE:

LINE	BEARING	DISTANCE
L1	N 26°40'39" W	89.86'
L2	N 63°19'21" E	66.13'
L3	N 60°54'14" E	222.70'
L4	N 29°43'22" W	9.00'
L5	N 61°01'22" E	129.23'
L6	S 28°29'53" E	82.60'
L7	S 61°30'44" W	249.48'



K:\... \AUTOCAD\LPD\NELSON\SC17881 cont cell site.DWG		
Revised		
Drawn By	ND	9-17-02
Checked By	DTM	10-2-02
Approved By	Steve Yoshino	Date 10-2-02
STEVE YOSHINO DIRECTOR OF PUBLIC WORKS		

CITY OF SANTA CLARA

PLAT OF CONTAMINANT CELL SITE
NORTH OF YERBA BUENA WAY

Scale	1" = 200'
Ref.	SC 17,881
Tracing No.	11,317-A